IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 9998 OF 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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SURENDRANAGAR DISTRICT PANCHAYAT - Petitioner(s)
Versus
KESABHAI MAVJIBHAI & ANR. - Respondent(s)

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Appearance :
Shri H.S. Munshaw for Petitioner(s).
Shri K. N. Shastri for Shri D.A. Surani for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 13/08/2007

ORAL JUDGMENT

The petitioner, being aggrieved by the award dated 29th January, 1999 passed by the learned Presiding Officer, Labour Court,

Surendranagar in Reference (LCS) No.804 of 1989 directing reinstatement of the respondents-workmen with 20% back -wages and other benefits, is before this Court with a submission that the award made by the learned Labour Court is patently illegal and bad.

2. Shri H.S. Munshaw, learned Counsel for the petitioner, submitted that for application of Section 25-F of the Industrial Disputes Act, 1947, a workman is required to prove that he has worked continuously or he was in continuous service, as required under Section 25-B of the Act, and if he fails in proving it, then, such workman would not be entitled to any benefits on the ground that his removal would amount to illegal retrenchment. He submits that the facts available on the record and even as referred in the award, would clearly show that neither of the respondents worked for 240 days.

3. Shri K. N. Shastri, learned Counsel for the respondents, however, submitted that the learned Court below has drawn an adverse inference against the petitioner and as the learned Court below was justified in drawing the adverse inference, the view taken by the learned Labour Court, being a plausible and probable view, should not be disturbed by this Court under Article 227 of the Constitution of India.

4. True it is, that in a petition under Article 227 of the

Constitution of India, the High Court is not required to reassess the evidence or re-record the finding or substitute its finding in place of the reasonable finding recorded by the subordinate Court or Tribunal, but, that does not mean that the perverse findings recorded by the Court cannot be corrected or set aside by the High Court under Article 227 of the Constitution of India.

5. In the present case, from the material available on the records, it clearly appears that neither of the workmen had worked for 240 days in twelve calendar months preceding the date of removal. Even assuming that the defences raised by the petitioner were false or absolutely untrue, then, too, the weakness in the case of the present petitioner would not be used as a weapon against the petitioner. The first requirement is that a party, who comes to the Court with an allegation, must prove his case and if the other party fails in disproving the case or does not raise a reasonable defence, then only, the Court would be entitled to grant the relief to the workman/applicant before the said Court.

6. In the present case, the respondents have miserably failed in proving that they had worked for 240 days. If that is so, they cannot be deemed to be in continuous service under Section 25 and consequently, would not be entitled to any protection under Section 25-F of the Act.

7. The petition is allowed. The award passed by the learned Labour Court is quashed and set aside. Rule is made absolute. No costs.

[R.S.Garg, J.]

*kamlesh**